

OPEN PUBLIC SESSION

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

FEB - 3 2009

Federal Communications Commission
Office of the Secretary

OPEN PUBLIC SESSION

	EB Docket No.
IN THE MATTER OF:	: 07-147
	:
PENDLETON C. WAUGH,	: File No.
CHARLES M. AUSTIN,	: EB-06-IH-2112
and JAY R. BISHOP;	: NAL/Acct. No.
	: 200732080025
PREFERRED COMMUNICATION	:
SYSTEMS, INC.,	: FRN No.
Licensee of Various	: 0003469049
Site-by-Site Licenses in	:
the Specialized Mobile	:
Radio Service;	:
	:
PREFERRED ACQUISITIONS, INC.	: FRN No.
Licensee of Various	: 0003786183
Economic Area Licenses in	:
the 800 MHz Specialized	:
Mobile Radio Service.	:
	:

Monday, January 5, 2009

DEPOSITION OF CHARLES M. AUSTIN

called for examination by Counsel for the
Plaintiff, pursuant to Notice of Deposition,
at the Federal Communications Commission,
located at 445 12th Street, S.W., Washington,
D.C., at 9:00 a.m., when were present on
behalf of the respective parties.

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WITNESS:

DIRECT

CHARLES M. AUSTIN

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E-X-I-B-I-T-S

(None this volume)

P-R-O-C-E-E-D-I-N-G-S

(9:00 a.m.)

WHEREUPON,

CHARLES M. AUSTIN

WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST
DULY SWORN, WAS EXAMINED AND TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MR. OSHINSKY:

Q Okay. Mr. Austin, for the record,
my name is Gary Oshinsky, and with me is my
co-counsel, Anjali Singh, and we represent the
Enforcement Bureau of the Federal
Communications Commission, which I think
you've realized by now.

I'm going to begin taking your
deposition with some general background
information, and then Anjali will chime in at
the later part, probably this afternoon.

A Okay.

Q Okay. I'm going to ask you a
series of questions, and your answers are

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1 going to be recorded by the court reporter.
2 So, you have to speak up. You have to speak--
3 make your answer verbal. You can't nod or
4 shake your head, because he can't record that
5 on the record.

6 A I got you.

7 Q Have you had your deposition taken
8 before?

9 A No. Actually, the first time.

10 Q Is that right? Okay. All right.
11 One of the main rules of the deposition under
12 the FCC regulations is that since you've just
13 sworn under oath to tell the truth, you have
14 to tell the truth and to the best of your
15 ability.

16 And if there's something that you
17 don't remember, you can say you don't
18 remember, and if there's something that you're
19 not sure about, you tell us that, too.

20 We understand that some of these
21 things happened a long time ago, so you may be
22 asked to recall some of those in detail and,

1 of course, you may not have the best
2 recollection of those at this point.

3 This is not a test or a race, and
4 we ask you to try to reach back in your memory
5 and try to do the best you can to recollect
6 things.

7 If you need to have a question
8 repeated you can just ask, we'll be happy to
9 do that. If you don't understand a question,
10 you can ask us to clarify it.

11 We should try not to talk at the
12 same time, although I don't anticipate that's
13 going to be a problem, because the court
14 reporter can only record one person at a time.

15 And one of my first questions was:
16 Do you have an attorney here today. Are you
17 an attorney, yourself?

18 A No.

19 Q Okay. And you don't have an
20 attorney here today, do you?

21 A No.

22 Q Okay. And what's the best -- your

1 best understanding of Mr. Keller's whereabouts
2 and Mr. Kaufman's whereabouts?

3 A Kaufman is out of town. Keller
4 can be reached by phone if necessary.

5 Q Okay. But, to the best of your
6 knowledge, they were fully aware of the
7 deposition, the date and time --

8 A Yes.

9 Q -- set for today?

10 A That is correct.

11 Q Okay. And it was with their
12 agreement that you appeared here by yourself
13 without an attorney today?

14 A That is correct.

15 Q Just again, preliminarily, if you
16 need a break in questioning, just ask us, and
17 we'll arrange it. If you're in the middle of
18 an answer, something like that, we'd like you
19 to finish your answer, and then we can have a
20 break.

21 A Okay.

22 Q I was going to advise you that you

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1 had a right to confer with your attorney, but
2 that's not applicable right now, although I
3 suppose you could reach Mr. Keller by phone if
4 you had to. Okay. If you needed to do that,
5 you can inform us of that, and we can arrange
6 for a break at a certain point.

7 I'm going to ask you to answer the
8 questions as fully as you can. If, however,
9 at some later point in the deposition -- and
10 this is going to stretch on for a while -- you
11 realize that you gave an answer which you
12 could respond to better if you saw certain
13 documents or had access to other information,
14 even if it's five minutes or hours afterwards,
15 we'd like you to go back and supplement that
16 answer if you can.

17 And if you need access to
18 documents, we may have them or, I guess -- or
19 you may have them. It's possible. If you may
20 need to refer to some documents.

21 And we ask you to try to be as
22 complete as you can, even if it means going

1 back to a question that you got an hour
2 before. Okay?

3 A Okay.

4 Q All right. So, these are the
5 questions that I'm required to ask, and that
6 is: Are you taking any medication or drugs of
7 any kind that could affect your ability to
8 answer the questions today?

9 A No.

10 Q Okay. Have you had any alcohol to
11 drink in the last eight hours?

12 A No.

13 Q Okay. Are you sick or under a
14 doctor's care for an illness as of the present
15 time?

16 A No.

17 Q Is there any reason why you can
18 think of that you couldn't clearly and
19 truthfully answer the questions posed to you
20 today?

21 A No.

22 Q Okay. All right. So, for the

1 record, could you give us your full name.

2 A Charles Matthew Austin.

3 Q And your address.

4 A Corporate or --

5 Q No. I think your home address --
6 or actually, both, if you have them. I'm sure
7 you do.

8 A Corporate is 400 East Royal Lane,
9 Suite N-24, Irving, Texas 75039.

10 Q And your home?

11 A And the home is 7545 Cortina
12 Avenue, Atascadero, California 9 -- wait.
13 93422.

14 Q The corporate address is in Texas
15 and your home is in California, so where do
16 you work out of?

17 A We're in the process of making
18 some changes.

19 Q From what to what?

20 A I'm going to be working out of
21 California and maintaining the corporate
22 office in Texas for probably the next four

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1 months.

2 Q So you're going to be situated in
3 California, but the corporate -- the business
4 operations --

5 A Yes.

6 Q -- are going to be taking place
7 out of Texas?

8 A Yes.

9 Q And is there somebody who's going
10 to be running the business in Texas in your
11 stead?

12 A No. I'll be running it from
13 California.

14 Q Through the miracle of
15 electronics, I guess?

16 A Well, it's pretty easy to do that.

17 Q All right. Who will be in charge
18 of the California office?

19 A Linda McClain. Or, excuse me.
20 Did you say California?

21 Q No, I'm sorry. I meant the Texas
22 office.

1 A Yes.

2 Q Linda McClain?

3 A Linda McClain.

4 Q And how old are you?

5 A 45.

6 Q Are you married?

7 A No.

8 Q Do you have any children?

9 A No.

10 Q What was the highest level of
11 education you've attained?

12 A Some college, I guess. High
13 school and a couple of years of college. No
14 Associate degree.

15 Q An Associate, a two-year degree?

16 A No.

17 Q Oh, no Associate degree?

18 A No degree, yes.

19 Q Where did you go to college?

20 A Quest College and -- Junior
21 College, and Golden West College and Orange
22 Coast College.

1 Q I'm sorry. Give me the second one
2 again. Quest College and then?

3 A Golden West, which is in Orange
4 County.

5 Q Okay. Quest College is also in
6 California?

7 A Yes.

8 Q Are -- well, I think we know the
9 answer to this, but are you currently
10 employed?

11 A Yes.

12 Q Okay. And who do you work for or
13 what work do you do?

14 A I work for Preferred Communication
15 Systems, Inc. and I'm the CEO/president of
16 that company.

17 Q Do you have any other jobs --

18 A No.

19 Q -- besides that?

20 A No.

21 Q Can you give us a sort of a
22 summary of your duties and responsibilities at

1 Preferred Communications, which we'll refer to
2 for the record as PCSI?

3 A To run the corporation, including
4 everything.

5 Q All right. We're going to go into
6 more detail about those duties later, so I'll
7 let -- I'll move on from there.

8 How long have you held that
9 position?

10 A Since 1998.

11 Q Can you tell us what previous jobs
12 you had before that?

13 A Yes. I -- previous to that I was
14 -- ran an office, marketing office for Select
15 Digital, if I remember correctly. I remember
16 that being asked in -- in -- when we supplied
17 that information.

18 I'd probably do better if I had
19 access to that information. It's been a long
20 time.

21 Q All right. And could you tell us
22 what your duties and responsibilities were

1 there?

2 A Manage the office and its
3 employees.

4 Q So your title was manager?

5 A I'd have to go back and look.

6 Q Was there somebody over you? Did
7 you have a supervisor?

8 A No.

9 Q Okay. Do you know who owned that
10 business?

11 A Yes. Pendleton Waugh.

12 Q Approximately when was that?

13 A '93, '94. 1993, 1994.

14 Q Okay. Anything before that, or
15 anything in between that and 1998 when you
16 started with Preferred?

17 A I -- you know, I started a company
18 called Media Response.

19 Q When was that?

20 A That was in 1996.

21 Q Okay. And is that company still
22 in existence?

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1 A No.

2 Q And what about -- I'm sorry, the
3 company that was run by Pendleton Waugh that
4 you were working for, is that still in
5 existence?

6 A No.

7 Q Okay. And can you give me the
8 ending dates for both of those?

9 A '97 for Media Response, and I
10 believe -- I know this was submitted to you.
11 Let's see --

12 Q Approximately.

13 A '95.

14 Q And can you tell us why those two
15 businesses ended?

16 A Yes. The first one, Select
17 Digital ended when Express Communications went
18 out of business. And I closed Media Response
19 when I decided to go in a different direction,
20 businesswise.

21 Q What was the connection between
22 Select Digital and Express?

1 A It was a marketing office for
2 Express.

3 Q And were you also employed by
4 Express?

5 A No, not at that time. I may -- I
6 was out in -- no, I don't think I was ever
7 employed directly by Express Communications.

8 Q Okay. Now, when were you first
9 made aware about this deposition,
10 approximately? How long ago? A couple of
11 months? Six months?

12 A Be specific. Today's date or the
13 --

14 Q I'm asking because I'm going to
15 ask you some questions about how you prepared
16 for today's deposition.

17 A Okay.

18 Q So, I just want the record to
19 reflect approximately how much -- how long
20 you've known about it, so how much time you've
21 had to prepare. That's it.

22 A Oh. Has it been three months,

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1 four months? Three months?

2 Q Yes. It's been changed a couple
3 of times. Three or four months.

4 A Okay. Three to four months.

5 Q And did you review documents in
6 preparation for the deposition?

7 A Yes, I did.

8 Q Okay. Can you tell us generally
9 what category of -- or what categories of
10 documents you've reviewed?

11 A I reviewed the documents, the
12 interrogatories, letters of inquiry that we've
13 already supplied to the FCC, and I haven't
14 reviewed specific documents because it's ten
15 years and --

16 Q Well, did you review the documents
17 that were related to the interrogatories and
18 the letters of inquiry in any --

19 A Not -- no, not in the last couple
20 of weeks, no.

21 Q Well, I mean, but how about in the
22 three-month period, have you reviewed those

1 documents?

2 A Some of them, yes, but not all of
3 them. You've got ten years and there's
4 thousands of documents.

5 Q Yes. We well-know that. Okay.
6 And have you discussed and prepared for this
7 deposition with your attorney?

8 A Yes, I have.

9 Q Okay. Was there anybody else that
10 you spoke to or prepared with?

11 A No.

12 Q I'm going to ask you this
13 question, but I think I already know the
14 answer. If, in reviewing any of the documents
15 for the deposition, do you know whether any of
16 the documents you reviewed were ones that were
17 not included in response to the letters of
18 inquiry or the interrogatories?

19 A No. No.

20 Q No, you don't know, or no, there
21 are none?

22 A I believe you're asking did I

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1 review documents that they did not submit.

2 Q Yes.

3 A Or documents that are not included
4 in discovery, and the answer to that is no.

5 Q Okay. So, everything that you
6 reviewed would have already been submitted --

7 A Yes.

8 Q -- as far as you know?

9 A Yes, that's correct.

10 Q All right. Can you tell us about
11 your business background.

12 A Yes.

13 Q Okay. Would you go ahead. In
14 other words, the business background that you
15 utilized while working at PCSI and PAI.

16 A Well, that's a broad question.

17 Q If there's a better way to look at
18 it, you tell me.

19 A Yes.

20 Q How would you characterize your
21 business background in leading up to your
22 position at PCSI? What qualified you to be

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1 head of PCSI?

2 A That's good, a good question.
3 Background in communication licensing, 800 Mhz
4 licensing in particular, and general business
5 experience in operating a company.

6 Q And that would have been the two
7 companies that you referred to earlier?

8 A Yes.

9 Q Okay. And how did you obtain your
10 experience in 800 MHz licenses?

11 A Through my work with Express
12 Communications.

13 Q Okay. In other words, you were
14 the -- again, you were the marketing arm for
15 Express and Express was dealing --

16 A Yes.

17 Q -- in 800 MHz licenses?

18 A Yes.

19 Q Have you headed or owned any other
20 businesses besides PCSI and PAI that dealt
21 with telecommunications?

22 A No.

1 Q What was it Express -- what was
2 Express -- let's see. What was Express's
3 business plan, Express Communications'
4 business plan which you did the marketing for?

5 A We were acquiring 800 MHz SMR
6 licenses throughout the United States and
7 Puerto Rico to build and operate wireless
8 systems.

9 Q And did you, in fact, acquire
10 licensing in Express?

11 A We -- we had acquired quite a --
12 hundreds of licenses throughout the country on
13 construction and management agreements. And--

14 Q Yes, go ahead. I'm sorry.

15 A And sought a waiver which was
16 denied at the time, but we had gathered up a
17 number of licenses to put together a regional
18 system. But it never came -- it never came to
19 fruition.

20 Q And why didn't it come to
21 fruition?

22 A Because the granting of the waiver

1 was not -- did not come forward.

2 Q And what was the basis of the
3 waiver request?

4 A I can't recall at this time. It's
5 been a while.

6 Q Now, did Express Communications,
7 did there come a time when Express
8 Communications went out of business?

9 A That is correct.

10 Q Okay. Can you tell us why it went
11 out of business?

12 A I'm sure there was a number of
13 factors that went into why Express -- but I
14 would say largely it had to do with probably
15 the legal problems surrounding Pendleton
16 Waugh.

17 Q Okay.

18 A As to why the company went under.

19 Q Can you tell us briefly what those
20 problems were?

21 A Well, I think Pendleton Law's
22 legal problems are in the record in terms of

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1 his --

2 Q What's your knowledge of it?

3 A Pen was -- had plead guilty to
4 securities violations.

5 Q Okay. Can you give us a little
6 more detail, if you know?

7 A I believe the federal was
8 conspiracy to evade the Money Reporting Act.

9 Q Okay. And was there a state
10 charge as well?

11 A There was a state charge as well.

12 Q Do you know what that was?

13 A It was a security -- no, I don't
14 recall the specifics of that one at the
15 moment.

16 Q But it was some form of security
17 violation?

18 A Yes.

19 Q Was it just those two, to your
20 knowledge?

21 A Yes.

22 Q At the time -- do you remember

1 approximately when those -- were those two
2 charges occurring at about the same time?

3 A No, I think there was a gap, a
4 gap. The first one was federal and the second
5 one was state.

6 Q A gap of years or months?

7 A Months or -- months to a year, I
8 believe.

9 Q And at the point where -- do you
10 remember approximately what year that was in?
11 Let's start with the federal.

12 A It was in the '94, '95.

13 Q Okay.

14 A Yes, '94, '95.

15 Q And can you tell us what your
16 relationship was with Pendleton Waugh at that
17 point?

18 A I --

19 Q The point where he was convicted,
20 what your personal relationship was.

21 A My personal? As opposed to
22 business? Obviously I worked for him.

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